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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,817	09/05/2003	Clay Essick	E48154.0002.5	9410

26158 7590 11/17/2004

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. BOX 7037
ATLANTA, GA 30357-0037

EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,817

Applicant(s)

ESSICK, CLAY

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: The use of "Figure 4a" (page 7, line 1) is objected to because there is no figure 4a.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As to claim 1, the limitation "and a non-stretchable portion, the stretchable portion is longer than the non-stretchable portion" (lines 14-15) lacks antecedent basis in the specification as filed for the band including a "non-stretchable portion" and for the "non-stretchable portion" to have a length slightly less than the length of the stretchable portion. As to claim 11, the limitation "the elastic mounting loop comprises more than about fifty percent of the total length" (line 12) lacks antecedent basis in the specification as filed for the limit of "fifty percent" and the drawings are not sufficient for this particular number that would appear to have been arbitrarily chosen. In regard to claim 16, the limitation "the elastic strap being stretchable over more than fifty percent of its length (lines 3-5) lacks antecedent basis in the specification as filed and only

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claim 7 provides guidance and mentions a much larger number "at least about eighty percent of the total length". The remaining claims contain new matter through their dependence upon claims that incorporate new matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell (US 5086543) in view of Hasslinger et al. (US 4088136).

Mitchell (figures 1-5) teaches a retainer strap for releasably attaching an article to a base object, the retainer strap comprising: a resilient band 10 having a first connection point 14 made of hook material adapted to engage with loop material 16 at the first end of the band, thereby forming a mounting loop suited for mounting the retainer strap on the base object; a second connector 12 made of hook material adapted to engage with loop material 16 at a second connection point located between the first end and the first connection point, thereby forming an open attachment loop for grasping an article, wherein the second connector 12 can be connected, disconnected, and reconnected for grasping or releasing the article without also disconnecting the mounting loop connection. The difference is that Mitchell while clearly stating that the band 10 is made of a woven elastic material (col. 2, lines 11-12) and that the band 10 includes Velcro fastener portions (col. 2, lines 16-18), the band is not stated as being made of portions wherein the stretchable portion is greater than fifty percent. However, Hasslinger et al. (figures 1, 3)

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teaches an elastic (col. 7, lines 48-55) retainer strap for releasably attaching an article 30 to a leg wherein the loop material 14 substantially covers the face of the band so as to provide greater adjustability and the band is elastic over more than fifty percent of its total length and is explicitly made of hook and loop fastener straps that are elastic. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). As it would be beneficial to provide greater adjustability to the retainer strap of Mitchell it would have been obvious to modify the retainer strap of Mitchell so that the elastic strap is stretchable over its length in view of Hasslinger et al. suggesting that it is desirable to make the strap stretchable over fifty percent of its length so as to provide greater adjustability. As to claim 3, it would have been obvious to modify the retainer strap of Mitchell so that loop material substantially covers the face of the strap in view of Hasslinger et al. suggesting such structure so as to provide greater adjustability. In regard to claim 7, the tab 26 of the strap of Mitchell comprises less than 20 percent of the length of the strap. As to claims 17 and 18, the use of thermal fusing to secure the hook material to the strap would have been obvious in view of Hasslinger et al. suggesting the use of welding (col. 5, lines 3-5) and flame lamination (col. 5, lines 60-67) to secure the hook material to the strap as being desirable. In regard to claim 19, Hasslinger et al. would suggest the particular choice of length of 24-28 inches in figure 4 since such a length would be consistent with the strap being fastened about the thigh. Further, Mitchell states that the band is sized both for length and width depending upon the application for which it is intended (col. 2, lines 12-15) as do Hasslinger et al. (col. 4, lines 2-12).

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Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell (US 5086543) in view of Hasslinger et al. (US 4088136) as applied to claim 1 above and further in view of Antaki (US 5752633).

Further of modification of the device of Mitchell (figures 1-5) who teaches a retainer strap for releasably attaching an article to a base object, the retainer strap comprising: a resilient band 10 having a first connection point 14 made of hook material adapted to engage with loop material 16 at the first end of the band, thereby forming a mounting loop suited for mounting the retainer strap on the base object; a second connector 12 made of hook material adapted to engage with loop material 16 at a second connection point located between the first end and the first connection point, thereby forming an open attachment loop for grasping an article, wherein the second connector 12 can be connected, disconnected, and reconnected for grasping or releasing the article without also disconnecting the mounting loop connection so that the elastic material is stretchable by at least 30 percent would have been obvious in view of Antaki (figures 1, 12-14) teaching elastic retainer strap structure that includes hook and loop fasteners wherein the strap has elasticity consistent with being capable of stretching from 14-15 inches long to 22 inches long (col. 3, lines 61-65), thereby permitting snug securement to the base object with enhanced adjustability. As it would be desirable to enhance the snug securement of the retainer strap of Mitchell and improve the adjustability it would have been obvious to modify the retainer strap of Mitchell to be stretchable by at least 30 percent as suggested by Antaki. As to the dimensions in claims 9 and 10, these are suggested by Antaki in the above characterization of length, which covers the range of girth and further the width of 2 inches is also suggested by Antaki as being desirable on retainer straps (col. 3, lines 61-65).

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Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell (US 5086543) in view of Hasslinger et al. (US 4088136) as applied to claim 16 above, and further in view of Antaki (US 5752633).

Further modification of the retainer strap of Mitchell such that the width of the strap fall in the range from about 0.5 inches to about 2 inches would have been obvious in view of Antaki suggesting retainer strap structure with a width of 2 inches as being desirable on retainer straps (col. 3, lines 61-65).

Claims 11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell (US 5086543) in view of Hasslinger et al. (US 4088136) as applied to claim 16 above, and further in view of Arendt et al. (US 5259657).

Further modification of the generically usable retainer strap of Mitchell such that it is used to secure an object to a sun visor would have been obvious in view of Arendt et al. (figures 1, 3, 4) in which the elastic straps 47a, 47b have hook and loop material at their ends so as to secure the straps to the sun visor and there is an elastic attachment strap 75 for articles to be held to the visor.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell (US 5086543) in view of Hasslinger et al. (US 4088136) and Arendt et al. (US 5259657) as applied to claim 11 above, and further in view of Antaki (US 5752633).

Further modification of the retainer strap of Mitchell such that the elastic material of the strap is stretchable by at least 30 percent would have been obvious in view of Antaki (figures 1, 12-14) teaching elastic retainer strap structure that includes hook and loop fasteners wherein the strap has elasticity consistent with being capable of stretching from 14-15 inches long to 22

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inches long (col. 3, lines 61-65), thereby permitting snug securement to the base object with enhanced adjustability.

Response to Arguments

Applicant's arguments filed September 3, 2004 have been fully considered but they are not persuasive.

Applicant alleges figures 1 and 2 of the application provide the basis for the stretchable mounting loop portion comprising at least about fifty percent of the total length of the strap. While fifty percent may be closer than forty-five percent of the total strap length it is not clear that the number should be at least about fifty-five percent of the total strap length.

As to applicant's characterization of Mitchell as having non-stretchable and inelastic loop portion 16 is unsupported. Mitchell describes the band as elastic and while applicant alleges that Mitchell utilizes conventional Velcro loop material, it is worthwhile pointing out that so does applicant as stated numerous times in the specification. Additionally, Hasslinger et al. amply teaches the use of stretchable loop material as being conventional as an alternative construction to that of Mitchell and the alternative of Hasslinger et al. would provide the advantage of greater adjustability. The provision of greater adjustability as taught by Hasslinger et al. by utilizing conventional Velcro materials provides the suggestion of modifying the teachings of Mitchell.

In regard to applicant's argument with respect to Antaki, both Mitchell and Antaki are retaining straps and it the as Antaki suggests the provision of a level of stretchability so as to enhance snugness, this acts as the suggestion to modify the structure of Mitchell.

As to applicant's argument with respect to Arendt et al., Mitchell is a retainer strap to hold two objects close very securely, but with adjustability, and as Arendt et al. utilizes an elastic

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retainer strap upon a visor, the advantages of the retainer strap of Mitchell serve as the suggestion to utilize such teachings in the environment of a visor as taught by Arendt et al.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

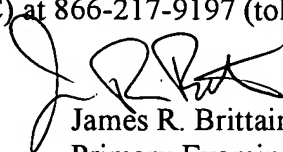
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB